

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE		EFFECTIVE DATE 12/29/10	NUMBER 03.03.140
SUBJECT PROHIBITED SEXUAL CONDUCT INVOLVING PRISONERS		SUPERSEDES 03.03.140 (07/09/07); 05.01.150 (12/21/09)	
		AUTHORITY MCL 750.520c; 791.203; 791.204; 42 USCA 15601 et. seq.	
		ACA STANDARDS 4-4281-1 through 4-4281-7	
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POLICY STATEMENT:

The Department enforces a zero tolerance standard for sexual violence between or among prisoners. The Department also enforces a zero tolerance for staff sexual misconduct, staff sexual harassment, and staff overfamiliarity with prisoners.

RELATED POLICIES:

01.01.140	Internal Affairs
02.03.100	Employee Discipline
03.03.105	Prisoner Discipline
03.03.110	Special Problem Offender Notice
03.03.130	Humane Treatment and Living Conditions for Prisoners
04.05.120	Segregation Standards

POLICY:

DEFINITIONS

- A. Prisoner on Prisoner Sexual Violence – Abusive sexual contact and non-consensual sexual acts by a prisoner with a prisoner who has not consented, including a prisoner who is unable to consent or refuse. For purposes of this policy:
 1. “Abusive sexual contact” means physical contact with another prisoner for sexual purposes including intentional touching of sexual areas but not including non-consensual sexual acts.
 2. “Non-consensual sexual acts” means intercourse, cunnilingus, fellatio, or any other penetration or intrusion, however slight, of any part of another prisoner’s body or of any object into the genital or anal opening of another prisoner’s body.
- B. Staff Overfamiliarity - Conduct between an employee and a prisoner which has resulted in or is likely to result in intimacy, including but not limited to a kiss or a hug, or a close personal or non-work related association.
- C. Staff Sexual Harassment – Gestures and verbal or written statements or comments of a sexual nature directed by staff to a prisoner, including demeaning references to gender or derogatory comments about body or clothing and profane or obscene language or gestures.
- D. Staff Sexual Misconduct - A sexual act directed by an employee toward a prisoner, including any of the following:
 1. An attempted, threatened, or requested sexual act or helping, advising, or encouraging another employee to engage in a sexual act.
 2. The intentional touching, either directly or through clothing, of a prisoner's genitals, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, arouse, or gratify the sexual desire of

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any person.

3. Invasion of privacy for sexual gratification, indecent exposure, or voyeurism.

GENERAL INFORMATION

- E. For purposes of this policy, "prisoner" includes probationers in the Special Alternative Incarceration Program (SAI) and parolees residing in a Residential Reentry Program (RRP) facility unless otherwise stated.
- F. This policy does not apply to probationers and parolees who are being supervised in the community except as set forth in Paragraph K; however, staff sexual misconduct/sexual harassment and staff overfamiliarity involving these offenders also is prohibited and shall be reported and investigated as set forth in PD 01.01.140 "Internal Affairs" and PD 02.03.100 "Employee Discipline".
- G. Allegations of prisoner sexual assaults against staff shall be reported to the Michigan State Police (MSP) or other appropriate law enforcement agency for investigation. A prisoner in a Correctional Facilities Administration (CFA) facility also shall be subject to discipline in accordance with PD 03.03.105 "Prisoner Discipline" and, as appropriate, reclassification to a higher security level, including segregation, in accordance with PD 05.01.130 "Prisoner Security Classification" and PD 04.05.120 "Segregation Standards".

PRISON RAPE ELIMINATION ACT

- H. The Prison Rape Elimination Act of 2003 ("PREA") addresses prisoner on prisoner sexual violence, staff sexual misconduct, and staff sexual harassment in correctional facilities. PREA specifically provides for the analysis of the incident and effects of such conduct and requires the issuance of national standards to address sexual abuse in a correctional setting. The Administrator of the PREA Section, Operations Support Administration (OSA), shall be responsible for reporting statistical information and other data as required under the Act and for oversight of the Department's compliance with the national standards when issued. The PREA Administrator also is responsible for monitoring compliance with this policy.

PROHIBITED CONDUCT

- I. Prisoners are prohibited from having any sexual contact with another prisoner. A prisoner in a CFA facility who voluntarily engages in such behavior is subject to discipline in accordance with PD 03.03.105 "Prisoner Discipline" and, as appropriate, reclassification to a higher security level, including segregation, in accordance with PD 05.01.130 "Prisoner Security Classification" and PD 04.05.120 "Segregation Standards". A Special Problem Offender Notice shall be issued, as appropriate, as set forth in PD 03.03.110 "Special Problem Offender Notice". Parolees residing in an RRP facility are subject to parole revocation in accordance with PD 06.06.100 "Parole Violation Process". Probationers in SAI are subject to termination from that program and may be returned to the jurisdiction of the sentencing court.
- J. Staff sexual harassment/sexual misconduct and staff overfamiliarity are violations of Department work rules; staff engaging in such conduct are subject to discipline pursuant to PD 02.03.100 "Employee Discipline". It also is a felony for staff to engage in sexual contact with a prisoner, as defined in MCL 750.520c.
- K. It is a felony for a contractual employee or a volunteer to engage in sexual contact with a prisoner, as defined in MCL 750.520c. A contractual employee or volunteer who engages in such behavior shall be prohibited from providing services within any Department correctional facility. In addition, a parolee or a probationer shall not be required to receive services from a contractual employee or volunteer in the community known to have engaged in such conduct. If such contact is reported by a parolee or probationer, the supervising agent shall ensure that the parolee or probationer is not required to have any further contact with the individual pending investigation of the matter. The supervising agent also

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shall immediately notify the Deputy Director of Field Operations Administration (FOA) or designee of the matter through the appropriate chain of command; the FOA Deputy Director or designee shall ensure a prompt investigation is conducted to verify whether the contractual employee or volunteer was found to have engaged in such conduct and, if verified, take appropriate action to ensure the individual no longer provides services to probationers or parolees.

- L. Due to concerns unique to facilities housing female prisoners, including privacy issues, staff assigned to such facilities are subject to additional requirements. Those requirements shall be set forth in procedures approved by the PREA Administrator.

CONFIDENTIALITY OF REPORTS AND INVESTIGATIONS

- M. Reasonable steps shall be taken to ensure the confidentiality of reports of conduct prohibited by this policy and any resulting investigations. Persons interviewed as part of an investigation shall be specifically warned not to discuss the investigation with others. Staff who intentionally compromise this confidentiality shall be subject to discipline in accordance with PD 02.03.100 "Employee Discipline"; prisoners in a CFA facility who intentionally compromise this confidentiality shall be subject to discipline in accordance with PD 03.03.105 "Prisoner Discipline". This does not preclude staff from discussing such matters with their attorneys or in accordance with this or any other policy directive, Civil Service Commission rules and regulations, or applicable collective bargaining unit agreements; it also does not preclude prisoners from discussing such matters with their attorneys, to seek treatment, or to ensure their own safety. The PREA Administrator shall share with the facility head and his/her supervisors, as appropriate, allegations of conduct prohibited by this policy which are received directly by the PREA Section.

REPORTING PROHIBITED CONDUCT

- N. Staff shall immediately report allegations of conduct prohibited by this policy to appropriate supervisory staff. If the allegations pertain to conduct at another facility, the Warden or RRP facility Supervisor shall ensure that the appropriate facility head is notified of the allegations in writing; the Inter-Administration Investigation Protocol issued by the CFA and FOA Deputy Directors shall be followed if the allegation is regarding the conduct of an employee from another Administration.
- O. Prisoners may report allegations of conduct prohibited by this policy, including threats of such conduct, to the Inspector or any other Department employee. Such allegations may be reported verbally or in writing, including through the grievance process. If reported verbally to an employee, the employee shall document it in writing as soon as possible and report it to appropriate supervisory staff. Prisoners also may report such allegations to the PREA Administrator either in writing or through the sexual assault hotline.
- P. Prisoners in a CFA facility who report that they have been the victim of a prisoner on prisoner non-consensual sexual act or staff sexual misconduct shall be referred to the Bureau of Health Care Services (BHCS) for examination, evidence collection, and treatment. They also shall be referred to BHCS psychological services staff for assessment, counseling, and other necessary mental health services consistent with the requirements set forth in PD 04.06.180 "Mental Health Services". Parolees in an RRP facility who report that they have been the victim of a prisoner on prisoner non-consensual sexual act or staff sexual misconduct shall be permitted to speak with a counselor available in the local community, if requested.
- Q. Prisoners in a CFA facility who make accusations of misconduct against employees, including for staff sexual misconduct/sexual harassment or staff overfamiliarity, which after investigation are determined to be unfounded shall be charged with the misconduct of "Interference with the Administration of Rules", with approval of the CFA Deputy Director or designee. Hearings shall be conducted in accordance with PD 03.03.105 "Prisoner Discipline".
- R. Complaints filed by a prisoner regarding conduct prohibited by this policy shall serve to exhaust a

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prisoner's administrative remedies only when filed as a grievance through all steps of the grievance process in compliance with PD 03.02.130 "Prisoner/Parolee Grievances".

INVESTIGATION OF ALLEGATIONS OF PROHIBITED CONDUCT

- S. Staff who are accused of, witnessed, or have personal knowledge of conduct prohibited by this policy and refuse to cooperate with an investigation shall be subject to discipline, in accordance with PD 02.03.100 "Employee Discipline".
- T. The Warden or FOA Deputy Director, as appropriate, shall ensure that the complainant and the victim if not the complainant are notified in writing of the final disposition of an investigation involving staff sexual misconduct/sexual harassment or staff overfamiliarity. This shall include notification of whether any disciplinary action has been taken; however, details of the discipline, including the specific charges and sanctions, shall not be provided.
- U. Wardens and, for RRP facilities, the FOA Deputy Director shall ensure that information on all allegations of staff sexual misconduct/sexual harassment and staff overfamiliarity are entered into the Allegations Investigations Personnel Action System (AIPAS) at their respective facilities; allegations of prisoner on prisoner sexual violence also shall be entered as directed by the PREA Administrator. In addition, information on the outcome of each investigation shall be entered. Information on allegations that do not result in sustained rule violations shall not be retained in an employee's Personnel file or used for any purpose not authorized by this or any other policy directive. Only the OSA Administrator and his/her staff involved in employee disciplinary proceedings, including the Internal Affairs Division, the PREA Administrator and his/her staff, and other staff specifically authorized by the Director or designee shall have access to information in AIPAS.
- V. For each investigation which sustains an allegation of prisoner on prisoner sexual violence, and for each investigation which results in sustained disciplinary charges for staff sexual misconduct/sexual harassment, staff designated by the Warden shall ensure that a completed United States Department of Justice Survey on Sexual Violence form (SSV-IA) is sent to the PREA Section along with any other documentation as requested by the PREA Administrator. If the case involves only an allegation of staff overfamiliarity, documentation shall be provided as requested by the PREA Administrator or designee.

Prisoner on Prisoner Sexual Violence

- W. All reported allegations of prisoner on prisoner sexual violence or threats of such behavior, whether reported verbally or in writing, shall be referred to the Warden or designee or, in FOA, to the Administrator of the Office of Parole and Probation Services or designee, for investigation. The assigned investigator shall personally interview the alleged victim, the alleged perpetrator, and sufficient witnesses to establish the facts, unless otherwise directed by the investigating law enforcement agency. The investigation shall be coordinated as necessary with the Hearing Investigator if misconduct charges are issued.
- X. Allegations of prisoner on prisoner non-consensual sexual acts also shall be referred to MSP or other appropriate law enforcement agency for investigation. The Department investigation shall be coordinated as necessary with the investigating law enforcement agency.

Staff Sexual Misconduct/Harassment and Staff Overfamiliarity

- Y. All reported allegations of staff sexual misconduct/sexual harassment or staff overfamiliarity, whether reported verbally or in writing, shall be referred for investigation as set forth in PD 02.03.100 "Employee Discipline" or PD 01.01.140 "Internal Affairs", as appropriate. The Administrator of the Internal Affairs Division shall ensure that all allegations that, if true, would constitute a criminal act are referred to MSP or other appropriate law enforcement agency for investigation; however, the Department investigation shall proceed in accordance with PD 01.01.140 "Internal Affairs" and PD 02.03.100 "Employee Discipline" regardless of whether the referral results in criminal prosecution.

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- Z. In all investigations of staff sexual misconduct/sexual harassment or staff overfamiliarity, investigators shall personally interview the complainant, the alleged victim if not the complainant, the alleged perpetrator, and sufficient witnesses to establish the facts. The investigation shall not be closed simply due to the resignation, transfer, or termination of the accused staff person.

ADDITIONAL MEASURES TO MINIMIZE PROHIBITED CONDUCT

- AA. The Administrator of the Office of New Employee Training and Professional Development, OSA, shall ensure both new employee and in-service training is available to staff regarding conduct prohibited by this policy. The Administrator of the Office of New Employee Training and Professional Development also shall ensure that training is available on how to conduct investigations under this policy. Staff, including investigators and facility administrators, shall attend training as required.
- BB. The PREA Administrator shall ensure a brochure is maintained to educate prisoners regarding conduct prohibited by this policy, self-protection, how to report conduct or threats of conduct prohibited by this policy, and treatment and counseling available to them. The brochure shall be available to all prisoners in CFA and RRP facilities and shall be incorporated into facility orientation programs and the Prisoner Guidebook. Reasonable measures shall be taken to ensure that non-English speaking prisoners receive the same information.
- CC. Each Warden and, for RRP facilities, the facility supervisor shall take reasonable measures to eliminate prisoner access to secluded areas of the facility. This includes conducting rounds of such areas as set forth in PD 04.04.100 "Custody, Security, and Safety Systems" and PD 06.01.115 "Custody, Security, and Safety Systems – Residential Reentry Program Facilities".

Identification/Counseling of Prisoners in CFA Institutions with Histories of Sexual Victimization or Sexually Aggressive Behavior

- DD. Prisoners received at a reception facility who have been convicted of or identified as having a history of a predatory or assaultive sexual offense shall be interviewed by a Qualified Mental Health Professional or other appropriate staff as set forth in PD 04.01.105 "Reception Facility Services". Prisoners identified as having a history of physical or sexual abuse, or who pose a reasonable concern that they may be sexually victimized while incarcerated due to age, physical stature, history, or physical or mental disabilities shall be similarly referred as set forth in PD 04.01.105.
- EE. Prisoners with a history of sexually aggressive behavior, or who are found guilty of sexually aggressive behavior while incarcerated, shall be referred to BHCS psychological services staff for assessment, counseling, and other necessary mental health services, as appropriate, consistent with the requirements set forth in PD 04.06.180 "Mental Health Services". Prisoners who are reasonably believed to be at risk of sexual victimization while incarcerated, or who have been sexually assaulted while incarcerated, shall similarly be referred.
- FF. Whenever a prisoner transfers, s/he shall be screened within 24 hours of arrival at the receiving facility to identify any history of sexually aggressive behavior and to assess the prisoner's risk of sexual victimization at that facility due to his/her age, physical stature, history, or physical or mental disabilities. This shall be documented in writing and considered when making housing, bed, and work assignments at that facility.

Placement of Prisoner With History of Sexually Aggressive Behavior Involving a Victim of the Same Sex

- GG. With approval of the Administrator of the Operations Division, CFA, or designee, a prisoner identified at a reception facility as having used force or the threat of force to engage in, or attempt to engage in, abusive sexual contact or a non-consensual sexual act with a victim of the same sex shall be placed only in single-cell housing only in a Level IV or V facility in accordance with PD 04.01.105 "Reception Facility Services" to reduce the potential assault risk to other prisoners. Similarly, if a prisoner is found guilty of misconduct for using force or the threat of force to engage in, or attempt to engage in, having

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used force or the threat of force to engage in, or attempt to engage in, abusive sexual contact or a non-consensual sexual act with a victim of the same sex while incarcerated in a CFA facility, the prisoner shall be placed only in single-cell housing in a Level IV or V facility unless the Warden believes that such placement is not necessary and the Operations Division Administrator or designee approves alternative placement.

- HH. Whenever it is determined that a prisoner may be placed only in single-cell housing in a Level IV or V facility, the prisoner's continuing need for such placement shall be reassessed whenever s/he is screened for security classification pursuant to PD 05.01.130 "Prisoner Security Classification"; the original reason for the placement and the prisoner's conduct since the original incident that led to the placement shall be taken into consideration. If it is believed that the prisoner may no longer require such placement, the case shall be referred to the Warden for review. If the Warden agrees that the prisoner may no longer require such placement, the case shall be referred to the Operations Division Administrator or designee for a final determination. In all circumstances, however, the case shall be referred to the Administrator or designee for review at least every five years after the initial placement decision was made.
- II. The CFA Deputy Director may require that a prisoner who has used force or the threat of force to commit or attempt to commit a non-consensual sexual act involving a victim of the same sex be placed only in single-cell housing in a Level IV or V facility, or allow alternative placement, on his/her own initiative.

PROCEDURES

- JJ. The FOA Deputy Director and Wardens shall ensure that procedures are developed to implement requirements set forth in this policy directive; the procedures shall be sent to the PREA Administrator for review and approval within 60 calendar days after the effective date of the policy directive. This requirement includes ensuring that their existing procedures are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed. Facility procedures shall not conflict with procedures issued by the Director.

AUDIT ELEMENTS

- KK. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self audit of this policy pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

APPROVED: PLC 12/13/10